



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,183	03/12/2007	Maurice Morency	2003390-0031	8998
24280	7590	06/14/2010		
CHOATE, HALL & STEWART LLP	EXAMINER			
TWO INTERNATIONAL PLACE	TAKEUCHI, YOSHITOSHI			
BOSTON, MA 02110	ART UNIT	PAPER NUMBER		
	1793			
			NOTIFICATION DATE	DELIVERY MODE
			06/14/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

lbradley@choate.com
patentdocket@choate.com
jhess@choate.com

Office Action Summary	Application No. 10/583,183	Applicant(s) MORENCY ET AL.
	Examiner YOSHITOSHI TAKEUCHI	Art Unit 1793

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 09 March 2010.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-4,6-21 and 31-33 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-4,6-21 and 31-33 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 16 June 2006 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date _____
 5) Notice of Informal Patent Application
 6) Other: _____

DETAILED ACTION

1. Claims 1-4, 6-21, and 31-33 are presented for examination. Claim 5 and 22-30 are cancelled.
2. The declaration filed by Dr. Maurice Morency under 37 CFR 1.132 filed March 9, 2010 is insufficient to overcome the rejection of claims 1-4, 6-21, and 31-33 based upon Jebrak in view of Matthews and Jebrack in view of Matthews and Hitzrot as set forth in the last Office action because said declaration improperly does not compare the instant invention from the art of record.
3. The declaration filed by Dr. Holger Weiss under 37 CFR 1.132 filed March 9, 2010 is insufficient to overcome the rejection of claims 1-4, 6-21, and 31-33 based upon Jebrak in view of Matthews and Jebrack in view of Matthews and Hitzrot as set forth in the last Office action for the following reasons. First, it lacks the statement under § 1001 of Title 18 of U.S.C. "I declare further that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of United States Code and that such willful false statements may jeopardize the validity of this application or any patent issuing thereon". Second, it does not provide data comparing the prior art to the instant invention. While opinion evidence is given some weight, per MPEP § 716.01(c)(III), when all of the evidence is considered, the totality of the rebuttal evidence of nonobviousness fails to outweigh the evidence of obviousness.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1-10, 16, 31 and 32 are rejected under 35 U.S.C. 103(a) as being obvious over Jebrak et al. (Michel Jebrak, Maurice Morency & Denise Fontaine, Characterization of Steel Dust from the Sorel-Tracy Region and Technologies for their Treatment, Centre de Recherche en Environnement (1993)) in view of Matthews et al. (US 5,227,349).

Jebrak in view of Matthews is applied to claims 1-10, 16, 31 and 32 for the same reasons as provided in the prior Office action.

6. Claims 11-15, 17-21, and 33 are rejected under 35 U.S.C. 103(a) as being obvious over Jebrak et al. (Michel Jebrak, Maurice Morency & Denise Fontaine, Characterization of Steel Dust from the Sorel-Tracy Region and Technologies for their Treatment, Centre de Recherche en Environnement (1993)), in view of Matthews (US 5,227,349) and further in view of Hitzrot, Jr. (US 4,190,422).

Jebrak in view of Matthews and Hitzrot is applied to claims 11-15, 17-21, and 33 for the same reasons as provided in the prior Office action.

Response to Arguments

7. Applicant's arguments filed March 9, 2010 have been fully considered but they are not persuasive. The applicants argue that the phosphate surfactant has unexpected results compared to the use of other surfactants, relying on the declarations as evidence.

In response, the examiner respectfully notes that the declarations are insufficient to overcome the rejections to claims 1-4, 6-21, and 31-33 for the reasons provided *supra*.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to YOSHITOSHI TAKEUCHI whose telephone number is (571) 270-5828. The examiner can normally be reached on Monday-Thursday 9:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dr. Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/ Roy King/
Supervisory Patent Examiner, Art Unit
1793

/YOSHITOSHI TAKEUCHI/
Examiner, Art Unit 1793